

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25464 OF 2006

Dated: 17<sup>th</sup> JULY, 2007.

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Between :

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Pulagarla Srinivasa Rao ... Petitioner

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And

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1. The District Collector, Prakasam District,  
Ongole., and 4 others. ... Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.25464 OF 2006**

**ORDER :**

This writ petition is filed seeking a declaration that the order passed by the 3<sup>rd</sup> respondent – Revenue Divisional Officer, Kandukur, dated 25-11-2006 appointing the 5<sup>th</sup> respondent herein as dealer of the fair price shop of Pothavaram Village of Podili Mandal as arbitrary and illegal.

The facts, in brief, are as under :

The 3<sup>rd</sup> respondent issued a notification dated 1-12-2004 inviting applications from eligible candidates for appointment of a dealer on regular basis for the fair price shop of Pothavaram Village. The writ petitioner as well as the 5<sup>th</sup> respondent herein had applied seeking appointment. The 3<sup>rd</sup> respondent, having selected the 5<sup>th</sup> respondent, appointed him by order dated 29-1-2005. Challenging the said order, the petitioner herein preferred an Appeal before the 2<sup>nd</sup> respondent – Joint Collector -contending that the 5<sup>th</sup> respondent against whom a criminal case in C.C.No.41 of 2002 is pending in the Court of the Judicial Magistrate of First Class, Podili, is not qualified for appointment. The 2<sup>nd</sup> respondent having found that C.C.No.41 of 2002 is pending against the 5<sup>th</sup> respondent, set aside his appointment and allowed the Appeal by order dated 29-9-2005. Though the 5<sup>th</sup> respondent preferred a Revision Petition against the said order, the same was dismissed by order dated 4-1-2006.

Challenging the same, the 5<sup>th</sup> respondent filed W.P.No.714 of 2006 in this Court. It is to be noted that by that time C.C.No.41 of 2002 on the file of the Court of the Judicial Magistrate of First Class, Podili, ended in acquittal by order dated 14-8-2006. Having taken note of the said fact, this Court disposed of W.P.No.714 of 2006 by order dated 27-09-2006 directing as under :

*“In view of the above, the petitioner is directed to file an application annexing the copy of the order passed in C.C.No.41 of 2002 dated 14-8-2006 as required under law before the third respondent – Revenue Divisional Officer. On such application being filed, the third respondent shall consider the same and pass appropriate orders as per Clause-5(4) of the Annexure to the Control Orders within a period of three weeks from the date of filing of application by the petitioner.”*

Pursuant thereto, the 5<sup>th</sup> respondent herein made an application and having considered the same the 3<sup>rd</sup> respondent passed the impugned order dated 25-11-2006 appointing the 5<sup>th</sup> respondent as the dealer on permanent basis observing that at the time of interview he fared well among all the candidates and since the criminal case against him has also ended in acquittal he is eligible for appointment. Aggrieved by the said order, the petitioner herein preferred an Appeal before the 2<sup>nd</sup> respondent along with an application for stay. Alleging that the 2<sup>nd</sup> respondent failed to consider his appeal and no orders have been passed even on his application for stay, the petitioner filed the present writ petition on 5-12-2006.

The Revenue Divisional Officer, Kandukur filed a counter-affidavit denying the allegation that the appointment of the 5<sup>th</sup> respondent was contrary to G.O.Ms.No.53, dated 6-10-2003 and further stating that the petitioner who was never appointed as the dealer cannot seek a direction to continue him as dealer.

A separate counter-affidavit has been filed by the 5<sup>th</sup> respondent

also.

I have heard the learned Counsel for both the parties and perused the material on record.

It is contended by the learned Counsel for the petitioner that the appointment of the 5<sup>th</sup> respondent is contrary to the guidelines issued in G.O.Ms.No.53, dated 6-10-2003

and at any rate the 3<sup>rd</sup> respondent committed an error in appointing the 5<sup>th</sup> respondent without giving any opportunity to the petitioner to put forth his version.

At the outset, it is to be noted that against the impugned order dated 25-11-2006 passed by the 3<sup>rd</sup> respondent a remedy of appeal is available and as a matter of fact the petitioner has already preferred such an appeal before the 2<sup>nd</sup> respondent. Since the Statutory Appeal is pending as on today, it is neither proper nor necessary for this Court to express any opinion as to the validity or otherwise of the impugned order dated 25-11-2006. Hence, I deem it appropriate to leave it to the 2<sup>nd</sup> respondent to decide the Appeal on merits after hearing both the parties.

So far as the further direction sought by the petitioner to continue him as the fair price shop dealer of the shop in question is concerned, it is true that there was no order as such appointing the petitioner as the dealer. In the circumstances, the learned Government Pleader as well as the learned Counsel for the 5<sup>th</sup> respondent vehemently contended that the petitioner is not entitled to seek a direction to continue him as dealer.

However, it is relevant to note that while directing Rule Nisi, this Court by order dated 7-12-2006 in WPMP.No.32624 of 2006 granted an interim order directing the respondents to continue the petitioner as dealer of the fair price shop in question by suspending the impugned order dated 25-11-2006. The said order has been in operation till today and admittedly the petitioner has been distributing the commodities for

the past about 6 months.

It is also relevant to note that pursuant to the notification dated 20-12-2004 only two candidates i.e., the writ petitioner and the 5<sup>th</sup> respondent had applied and attended the interview before the 3<sup>rd</sup> respondent on 24-1-2005. As could be seen from the counter-affidavit of the Revenue Divisional Officer, though the 5<sup>th</sup> respondent herein was selected and was appointed on the ground that he had fared well in the interview and that he secured more marks in the SSC examination, there was no allegation against the petitioner with regard to his eligibility or otherwise.

In the circumstances and particularly keeping in view that for the past about six months by virtue of the interim order granted by this Court, the petitioner is distributing the commodities, I am of the opinion that it would be appropriate to continue the same arrangement till the statutory appeal is decided on merits.

Accordingly, the Writ Petition is disposed of with a direction to the 2<sup>nd</sup> respondent to dispose of the statutory appeal pending on his file against the order dated 25-11-2006 as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. Till such time, the impugned order dated 25-11-2006 shall remain suspended. No costs.

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**G. ROHINI, J.**

Dt.17-07-2007

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